

CLEARING OR CLOUDING THE DISCOURSE — A SOUTH AFRICAN PERSPECTIVE ON THE UTILITY OF THE IUCN PROTECTED AREAS GOVERNANCE TYPOLOGY

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‘To illustrate how difficult communication can be internationally, here is an example from outside of conservation. If you walk into a Starbucks in America and ask for a *café grande*, they will give you a medium-sized cup of coffee. If you ask for a *café grande* in Mexico, they may give you a bowl of coffee and a quizzical look. Ask for a *café grande* in Venice, and they will direct you to a shop on the Piazza Indipendenza. To understand parks and protected areas globally, we have to have a common language.’¹

I INTRODUCTION

While the creation of a common language for variations in coffee servings has been significantly expedited through the proliferation of global coffee chains, the task of creating a common language for protected areas remains a vexed issue, notwithstanding their existence as the foundation of the majority of international and domestic biodiversity conservation strategies.² Originating at the International Conference for the Protection of Flora and Fauna held in London in 1933,³ the international community has sought for approximately 80 years to develop a coherent terminology for describing, recognising and ultimately promoting the exceptionally diverse array of protected areas which exist across the world. Largely under the auspices of the International Union for the Conservation of Nature (IUCN), the past twenty years has seen the emergence of a global definition for ‘protected areas’⁴ and the

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¹ Brent Mitchell ‘“Who’s doing the protecting in protected areas?” A global perspective on protected area governance’ (2007) 24(3) *The George Wright Forum* 81.

² Nigel Dudley (ed) *Guidelines for Applying Protected Area Management Categories* (2008) 2.

³ *Ibid* at 3.

⁴ The most contemporary definition of ‘protected area’ is contained in the *IUCN Management Guidelines* op cit note 2 at 8, which defines it as ‘a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values’.

development of a series of comprehensive protected area guidelines,⁵ the most recent of which is a revised set of *Guidelines for Applying Protected Area Management Categories (IUCN Management Guidelines)*.⁶ The latter build on the original version developed by the IUCN in 1994⁷ and seek to promote a common language for protected areas management which reflects the shifts in the international conservation discourse during the past decade. Their specific purpose includes: facilitating planning of protected areas and protected area systems; improving information management about protected areas; and helping to regulate activities in protected areas.⁸

As their name suggests, the *IUCN Management Guidelines* focus largely on distilling a revised set of management categories, which like their predecessors, are largely based on the objectives for which a protected area is declared.⁹ These management categories are however 'neutral' regarding the essential issue of who owns, controls or is responsible for managing the protected area – cumulatively encompassed in the notion of protected areas governance. In a further attempt to assist in understanding, planning for and accurately recording protected areas, the *IUCN Management Guidelines* now include a matrix of protected area governance types, namely: governance by

⁵ These guidelines published under the auspices of the IUCN include: Barbara Lausche *Guidelines for Protected Areas Legislation* (1980); Adrian Davey *National System Planning for Protected Areas* (1998); World Commission on Protected Areas *Principles and Guidelines on Indigenous and Traditional Peoples and Protected Areas* (1999); Marc Hockings, Sue Stolton & Nigel Dudley *Evaluating Effectiveness — A Framework for Assessing the Management of Protected Areas* (2000); IUCN *Guidelines for Protected Areas Management Categories* (1994); Javier Beltran (ed) *Indigenous and Traditional Peoples and Protected Areas: Principles, Guidelines and Case Studies* (2000); Adrian Phillips (ed) *Financing Protected Areas — Guidelines for Protected Areas Managers* (2000); Trevor Sandwith, Clare Shine, Laurence Hamilton & David Sheppard *Transboundary Protected Areas for Peace and Co-operation* (2001); Paul Eagles, Stephen McCool & Christopher Haynes *Sustainable Tourism in Protected Areas — Guidelines for Planning and Management* (2002); Adrian Phillips *Management Guidelines for IUCN Category V Protected Areas, Protected Landscapes/Seascapes* (2002); Lee Thomas & Julie Middleton *Guidelines for Management Planning of Protected Areas* (2003); Grazia Borrini-Feyerabend, Ashish Kothari & Gonzalo Oviendo *Indigenous and Local Communities and Protected Areas: Towards Equity and Enhanced Conservation* (2004); Laurence Hamilton & Linda McMillan *Guidelines for Planning and Managing Mountain Protected Areas* (2004); Nigel Dudley & Adrian Phillips *Forests and Protected Areas — Guidance on the Use of IUCN Protected Area Management Categories* (2006); Lucy Emerton, Joshua Bishop & Lee Thomas *Sustainable Financing of Protected Areas: A Global Review of Challenges and Options* (2006); and Michael Lockwood, Graeme Worboys & Ashish Kothari (eds) *Managing Protected Areas — A Global Guide* (2006).

⁶ IUCN *Management Guidelines* op cit note 2 at x.

⁷ IUCN *Guidelines for Protected Areas Management Categories* (1994).

⁸ IUCN *Management Guidelines* op cit note 2 at 6.

⁹ The six principal management categories are: strict nature reserve; wilderness area; national park; natural monument; habitat or species management; protected landscape or seascape; protected area with sustainable use of natural resources. For a full description of each of these management categories see the *IUCN Management Guidelines* ibid at 7–24.

government; shared governance; private governance; and governance by indigenous peoples and local communities.¹⁰

It is this new set of protected areas governance types which forms the focus of this article. On a cursory first reading, they would appear to provide a vital step toward developing a ‘common language’ for understanding the myriad protected areas governance options adopted across the globe. However, as is partially acknowledged in the *IUCN Management Guidelines* themselves, there is some overlap in the proposed governance types, and their formulation appears to be largely founded on one component of governance, namely management. Their overlapping nature and the apparent indifference shown to other key components of governance — specifically who owns or controls the land in question — may well come to haunt their practical utility. This concern is heightened by the proposal that the governance type of each protected area should be identified, along the lines of the proposed four governance types, and recorded in the relevant national and international protected areas databases.¹¹ Is it prudent to progress with such an exercise when there appear to be some fundamental issues plaguing the formulation of the current protected areas governance typology?

This article seeks to address this key and contemporary issue of protected areas governance. It begins with a discussion of what governance is and its relevance to the protected areas context. It then moves to an analysis of the content of the four protected areas governance types promoted in the *IUCN Management Guidelines*, and a critical evaluation of their strengths and weaknesses using practical examples drawn from the South African context. It concludes with the proposal of a revised approach to understanding, planning for and recording the diversity and nuances inherent in protected areas governance.

II ‘GOVERNANCE’ AND ‘PROTECTED AREAS GOVERNANCE’

As one commentator has recently noted, ‘governance’ has emerged as the new ‘buzz word’ of 21st century discourse, and appears to be regarded as a ‘sort of magic wand’ that is potentially applicable to a diversity of challenges and contexts.¹² So, what is this notion of governance and why has it risen to the fore in the context of protected areas?

Definitions of governance are plentiful and they appear to be as varied as the commentators responsible for their creation. These definitions include: ‘the action or manner of governing or being governed’;¹³ ‘the institutions, processes and traditions which determine how power is exercised, how

¹⁰ Ibid at 25–32.

¹¹ Ibid at 27.

¹² Louis Kotze ‘Environmental governance perspectives on compliance and enforcement in South Africa’ in Alexander Paterson & Louis Kotze (eds) *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (2009) 104.

¹³ Robert Allen (ed) *The New Penguin English Dictionary* (2000) at 604.

decisions are taken and how citizens have their say';¹⁴ 'the traditions and institutions by which authority in a country is exercised';¹⁵ 'the use of institutions, structures of authority and even collaboration to allocate resources and coordinate or control activity in society or the economy';¹⁶ 'the sum of the many ways individuals and institutions, public and private, manage their common affairs';¹⁷ and 'the exercise of political, economic and administrative authority in the management of a country's affairs at all levels'.¹⁸

As is evident from the above definitions, the scope of governance as a concept is exceptionally broad. It is fundamentally concerned with the exercise of authority and specifically who exercises such authority, how such authority is exercised, and the outcome of the exercise of such authority. The source of this authority can stem from statute, custom and tradition. The manner in which this authority is exercised can similarly be informed or circumscribed by statute, custom and tradition. Those empowered to exercise authority include international organisations, government institutions, non-government organisations (NGOs), community organisations and private citizens. The objects that may be subject to the exercise of authority are varied, as are the desired outcomes which seek to satisfy social, economic, political and environmental agendas.

What is also reflected in the above definitions of governance is that it is inherently a neutral concept, fundamentally concerned with describing the types of 'complex mechanisms, processes, relationships and institutions through which citizens and groups articulate their interests, exercise their rights and obligations and mediate their differences'.¹⁹ As such, it should be distinguished from its subjective counterpart, the notion of 'good governance', which is concerned with the quality of governance and specifically the prevalence of characteristics such as participation, transparency, accountability, rule of law, effectiveness and equity.²⁰ The importance of, commit-

¹⁴ Isabelle Johnson *Redefining the Concept of Governance* (1997) 3. See further John Graham, Bruce Amos & Tim Plumptre *Governance Principles for Protected Areas in the 21st Century* (2003) 2, who define governance along very similar lines as 'the interactions among structures, processes, and traditions that determine direction, how that power is exercised, and how the views of citizens or stakeholders are considered by those making decisions'.

¹⁵ World Bank *A Decade of Measuring the Quality of Governance: Governance Matters 2007* (2007) 2.

¹⁶ Stephen Bell *Economic Governance and Institutional Dynamics* (2002).

¹⁷ Deirdre Curtin & Ige Dekker 'Good governance: the concept and its application by the European Union' in Deirdre Curtin & Ramses Wessel (eds) *Good Governance and the European Union: Reflections on Concepts, Institutions and Substance* (2005) 5.

¹⁸ United Nations Development Programme *Governance for Sustainable Human Development* (2005) 2.

¹⁹ Ibid.

²⁰ See Johnson op cit note 14 at 1. The United Nations Development Programme has gone as far as distilling the following nine characteristics of 'good governance': participation; rule of law; transparency; responsiveness; consensus orientation; equity; effectiveness and efficiency; accountability; and strategic vision (UNDP op cit note 18 at 4–5).

ment to, and recent work associated with fostering the good governance of protected areas is acknowledged.²¹ However, this article is principally concerned with the objective component of governance, specifically the process by which institutions afforded authority in diverse contexts are established, exercise authority and held accountable for their actions: which should in turn lead to good governance.

So, what is protected areas governance? According to Borrini-Feyerabend, it refers to 'who holds management authority and responsibility and can be held accountable according to legal, customary or otherwise legitimate rights'.²² It is accordingly concerned with the interactions between the myriad of structures, processes, institutions and traditions that have a role to play in the formation and management of protected areas, how the power is allocated and exercised within the protected areas, and the manner in which those who exercise such power are held accountable.

If one surveys the literature on protected areas which has been produced during the course of the past two decades in particular,²³ one is immediately struck by the diversity of structures, processes, institutions and traditions at play and the variance in the quality and consistency of governance across and between them. Following a comprehensive review of trends in global protected area governance between 1992 and 2002, Dearden et al acknowledged this diversity and concluded that protected areas governance has no 'one best way'.²⁴ Borrini-Feyerabend et al have similarly concluded that governance is a 'complex and nuanced phenomenon that . . . [is] not easy to circumscribe'.²⁵

However, if one sifts through this diversity and complexity, there appear to be two broad issues which fundamentally shape protected areas governance and the rights and obligations of those tasked with planning for, establishing, managing, regulating and financing protected areas.²⁶ The first

²¹ For further reading on the notion of good governance and protected areas see *IUCN Management Guidelines* op cit note 2 at 28, which highlights nine broad principles for good governance of protected areas; Graham et al op cit note 14 at 7–10; and Lockwood et al op cit note 5 at 134–40. See further the *Programme of Work on Protected Areas* (adopted at COP 7 of the *Convention on Biological Diversity* held in Kuala Lumpur in 2004 and annexed to COP 7 Decision VII/28) which specifically requests parties to 'consider governance principles, such as the rule of law, decentralization, participatory decision-making mechanisms for accountability and equitable dispute resolution institutions and procedures' (Programme Element 1, Goal 3, para 3.1.4).

²² Grazia Borrini-Feyerabend 'Governance of protected areas, participation and equity' in *Biodiversity Issues for Consideration in the Planning, Establishment and Management of Protected Areas Sites and Networks* (2004) 100.

²³ For the most contemporary and comprehensive distillation and discussion of this literature, see Lockwood et al op cit note 5.

²⁴ Phillip Dearden, Michelle Bennett & Jim Johnston 'Trends in global protected area governance, 1992–2002' (2005) 36(1) *Environmental Management* 89 at 99.

²⁵ Grazia Borrini-Feyerabend, Jim Johnston & Diane Pansky 'Chapter 5: Governance in protected areas' in Lockwood et al op cit note 5 at 117.

²⁶ These functions are distilled from the five powers identified by Graham et al op cit note 14 at 13), namely: planning powers; regulatory (including law enforcement)

relates to those who hold tenure over the land situated within a protected area. This issue is in turn influenced by: the range of actors holding tenure (which can include national, provincial and local government institutions; NGOs; community organisations; juristic and natural persons); the form of tenure (which can include legal or formal tenure; individual or customary tenure, common tenure; de jure and de facto tenure); and the content of the tenure (full ownership rights or more limited rights relating to development, use, access and/or occupation).²⁷

The second broad issue relates to management; specifically who is responsible for managing a protected area, and the form and nature of such management. The actors at play here are as diverse as those listed above in the context of tenure, and while they may be the same as those who hold tenure, this is not always the case. These actors may either undertake their role individually or in partnership with other actors through some form of co-management arrangement. The nature of the management rights and obligations is similarly varied, and range from statutorily prescribed management schemes to those informed by customary laws and traditions. Finally, the actual nature of the management activities can include: the preparation of management plans; the prescription of rules, norms and standards; permitting schemes; environmental assessment; and reporting.

These issues of tenure and management in turn significantly influence the quality of governance in protected areas. By quality I refer to participation, transparency, accountability, rule of law, effectiveness and equity — commonly referred to as good governance. It is accordingly not surprising that having expressly reaffirmed the vital current and future role of protected areas in conserving the globe's biological diversity, the parties attending the 5th World Parks Congress held in Durban (South Africa) in 2003 identified governance as 'central to the conservation of protected areas throughout the world', and that 'success in the coming decade will depend in part on strengthening the governance of protected areas'.²⁸ It was at this congress that an initial attempt was made to formulate a common language for understanding and describing the different forms of protected areas governance.²⁹ Four governance typologies were proposed (government; co-managed; private; and community conserved areas)³⁰ and the World Commission on Protected Areas was specifically mandated to include a governance dimension in the IUCN's protected areas management category

powers; spending powers; revenue generating powers; and the power to enter into agreements to share or delegate such powers.

²⁷ For a general discussion of the varying forms and content of rights and tenure which exists within protected areas, see David Wilkie, William Adams & Kent Redford *Protected Areas, Ecological Scale, and Governance — A Framing Paper* (2008) 8–14.

²⁸ World Commission on Protected Areas *Durban Action Plan* (2003) 257.

²⁹ *Ibid.*

³⁰ These four governance typologies were specifically based on the preparatory work of Graham et al op cit note 14 and Borrini-Feyerabend op cit note 22 at 100–105.

system to reflect accurately the plurality of protected area governance types.³¹ The 7th, 8th and 9th Conference of Parties (COP) to the Convention on Biological Diversity³² have further reiterated the need to improve and (where necessary) diversify and strengthen protected areas governance types, and for parties specifically to recognise the contribution of co-managed protected areas, private protected areas, and indigenous peoples and local community conserved areas within the national protected area system.³³

III OVERVIEW OF THE IUCN PROTECTED AREAS GOVERNANCE MATRIX

This process culminated in the inclusion of four forms of governance in the *IUCN Management Guidelines* (which were published in late 2008), the express purpose of which is to assist the international community and domestic policy-makers to understand, plan for and accurately record protected areas governance.³⁴ These forms largely mimic those proposed by Graham et al and Borriini-Feyerabend at the 5th World Parks Congress³⁵ and are: governance by government; shared governance; private governance; and governance by indigenous peoples and local communities.

(a) *Governance types*

(i) *Governance by government*³⁶

This is the traditional form of protected areas governance whereby a government body, usually a government agency or statutory authority, holds the authority, responsibility, and accountability for managing the area, determining its conservation objectives, and developing and enforcing its management plan. The government body usually owns or holds in trust the land, water and resources situated in the protected area. It is generally held directly accountable to the ministry providing for its appointment or designation. Consultation with relevant stakeholders regarding the establishment of the protected areas and its management is not the norm, although even under this form of governance, public participation and accountability are increasingly common and generally regarded as desirable. It is for this reason that even under this form of governance, provision for the delegation

³¹ *Durban Action Plan* op cit note 28 at 258.

³² (1992) 31 *International Legal Materials* 818.

³³ The importance of protected areas governance was affirmed in the *Programme of Work on Protected Areas* (adopted at COP 7 and annexed to Decision VII/28) which emphasises the need to recognise and promote a broad set of protected area governance types, including areas conserved by indigenous and local communities and private entities. See specifically Programme Element 1 (Goal 1.1, para 1.1.4) and Programme Element 2 (Goal 2.1: para 2.1.2 and paras 2.1.4–2.1.6; and Goal 2.2: paras 2.2.1–2.2.2, paras 2.2.4–2.2.5 and para 2.2.7). See further COP 8 Decision VIII/24 (para 18g) and COP 9 Decision IX/18 (paras 6a and 6d).

³⁴ *IUCN Management Guidelines* op cit note 2 at 25.

³⁵ See note 30.

³⁶ See *IUCN Management Guidelines* op cit note 2 at 26.

of planning or management functions to parastatals, NGOs, local communities, and or indigenous peoples is recognised. The ultimate authority however always vests in the government body. Owing to this diversity, three self explanatory sub-categories are identified in the *IUCN Management Guidelines*, namely: national ministry or agency in charge; sub-national ministry or agency in charge; and government-delegated management.

The nature and ambit of this form of governance is generally well defined and understood. However, one potential for confusion relates to the recognition that the government body may delegate various functions to an array of institutions, including NGOs, local communities or indigenous peoples. Although it is anticipated that the government body retains the ultimate authority over the area, the provision for delegation may often result practically in the transfer of some authority to the latter institutions. Uncertainty may therefore arise regarding at what point on the 'delegation continuum' the governance typology transcends into one of shared governance as opposed to governance by government.

(ii) *Shared governance*³⁷

In its simplest sense, shared governance involves governance by two or more actors. Its practical manifestation is however far from simple, and involves the employment of far more diverse and 'complex institutional mechanisms and structures . . . to share management authority and responsibility among a plurality of (formally and informally) entitled governmental and non-governmental actors'.³⁸ The *IUCN Management Guidelines* seek to collapse this diversity under two main sub-categories, namely 'collaborative management' (also referred to as 'co-management') and 'joint management'. The former encapsulates the scenario where authority vests in one body (predominantly a government agency or statutory authority), but this body is required by law or policy to inform and consult with other stakeholders. These stakeholders, traditionally limited to other relevant government agencies, have over time been extended to include local communities, indigenous peoples, NGOs, user associations, corporations, private landowners, or some combination thereof. The consultation process can be formalised through the establishment of multi-stakeholder bodies to assist in the formulation of management policies and proposals for consideration and adoption by the body formally appointed to manage the protected areas.

On the other hand, the latter — 'joint management' — differs from 'collaborative management' in that decision-making authority vests in a range of bodies such as those identified above in the context of collaborative management. The decision-making process is varied and may or may not

³⁷ See generally: *IUCN Management Guidelines* op cit note 2 at 26; Borrini-Feyerabend et al op cit note 5 at 32–50; and Ashish Kothari 'Chapter 20: Collaboratively managed protected areas' in Lockwood et al op cit note 5 at 528–48.

³⁸ *IUCN Management Guidelines* op cit note 2 at 26.

require consensus. Once a decision is made, its implementation is assigned or delegated to various agreed bodies or individuals.

While the two sub-categories of shared governance described above reflect variations in the decision-making process, the *IUCN Management Guidelines* identify a third sub-category reflecting the geographical construct of 'collaborative management', namely 'transboundary management'. This involves protected areas which traverse international borders and which accordingly require elaborate, predominantly joint-management schemes involving one or more government bodies and other stakeholders. It falls under the broad realm of shared governance to the extent that it involves the conclusion of bilateral or regional agreements to harmonise the management of two or more adjacent protected areas situated in different sovereign states.

What is somewhat confusing is how the above formulation of shared governance contained in the *IUCN Management Guidelines*, particularly the sub-categories of co-management and joint management, differ from the approach initially proposed in the *IUCN Guidelines on Indigenous and Local Communities and Protected Areas*,³⁹ and which is reinforced in contemporary texts on collaboratively managed protected areas.⁴⁰ Both identify the following as common features of co-managed protected areas. They are: arenas of social engagement, encounter and experimentation; capitalising on multiplicity, diversity and flexibility; based upon a negotiated, joint decision-making approach and some degree of power sharing; and promoting shared responsibilities and the equitable distribution of benefits.⁴¹ The *IUCN Guidelines on Indigenous and Local Communities and Protected Areas* specifically define co-managed protected areas as

'government-designated protected area where decision making power, responsibility and accountability are shared between governmental agencies and other stakeholders, in particular indigenous peoples and local and mobile communities that depend on that area culturally and or for their livelihoods'.⁴²

This formulation of co-management would appear to equate 'co-management' with the formulation of 'joint-management' as described under the *IUCN Management Guidelines*. Furthermore, the above definition of co-management is contained in a chapter titled 'Guidelines for co-managed protected areas' which is in turn contained in the *IUCN Guidelines on Indigenous and Local Communities and Protected Areas*. Some contemporary commentators simply conflate the meaning of collaborative management, co-management, joint management and multi-stakeholder management.⁴³ The mixed use of terminology, and the apparent lack of clarity regarding where to draw the line between shared governance and governance by

³⁹ Borrini-Feyerabend et al op cit note 5 at 32–50.

⁴⁰ Kothari op cit note 37 at 528–9.

⁴¹ Borrini-Feyerabend et al op cit note 5 at 38–9 and Kothari op cit note 37 at 528–9.

⁴² Borrini-Feyerabend et al op cit note 5 at 32.

⁴³ Kothari op cit note 37 at 528.

indigenous peoples and local communities have the potential for creating real confusion. This would appear to be diametrically opposed to one of the principal aims of creating governance typologies — the desire to create a common language for protected areas governance.

(iii) *Private governance*⁴⁴

This form of governance has been introduced in order to recognise the growing number of protected areas which have largely been established voluntarily by ‘private’ entities across the globe to promote conservation objectives.⁴⁵ These ‘private protected areas’, whilst often contributing to conservation, have frequently gone unnoticed and have accordingly often been omitted from the World Database on Protected Areas.⁴⁶

Private governance encapsulates protected areas owned or controlled by private entities, including individuals, NGOs and corporations acting individually or collectively. They are, as a result, not usually subject to direct government authority. The *IUCN Management Guidelines* do however recognise that other entities, notably indigenous peoples and local communities, can also ‘privately’ own or control land situated in protected areas.⁴⁷ It may on occasion therefore be difficult to distinguish this form of governance from the fourth form of governance described below, namely governance by indigenous peoples and local communities.

The rationale for private entities establishing such areas range from generating profit (such as accruing eco-tourism revenue) to promoting purely philanthropic conservation interests. Within such areas, all decision-making authority relating to setting conservation objectives and developing and implementing management planning is generally vested in the private entity by statute. However, the existence of a relevant statutory framework providing for the establishment, recognition and management of such areas, whilst desirable to ensure necessary accountability, is not a prerequisite. Incentives schemes (such as property tax and income tax benefits) frequently support the implementation of this form of governance. Three sub-categories are highlighted in the *IUCN Management Guidelines*, which are based upon whether the area is declared and run by: individual land-owners; non-profit organisations (such as NGOs or universities); or by for-profit organisations (corporations or co-operatives).

There are a number of troubling aspects associated with this form of governance. First, as mentioned above, it may be difficult to distinguish this form of governance from ‘governance by indigenous peoples and local

⁴⁴ See generally *IUCN Management Guidelines* op cit note 2 at 26.

⁴⁵ See the sentiments reflected in the *CBD Programme of Work on Protected Areas* op cit note 21 — specifically Programme Element 1 (Goal 1.1, para 1.1.4) and Programme Element 2 (Goal 2.1, para 2.1.2, para 2.1.3; and Goal 2.2, para 2.2.4 and para 2.2.7).

⁴⁶ *IUCN Management Guidelines* op cit note 2 at 32.

⁴⁷ Ibid.

communities' (discussed below) as these communities can also operate in the private realm. Secondly, the *IUCN Management Guidelines* fail properly to reflect the diverse array of tenure options under which the land or natural resources may be held by 'private' landowners or the nuanced array of 'effective means' through which these areas may be managed. Thirdly, there may frequently be a degree of overlap between this type of governance and the former — namely shared governance — as private landowners may well enter into some form of collaborative or joint management scheme in order to share the management obligations and costs with government agencies and NGOs. Fourthly, the IUCN definition of protected areas provides that a protected area must be managed in perpetuity.⁴⁸ Private protected areas are frequently established for certain defined periods, which can generally be extended with the agreement of the private entity holding the land. While contributing significantly to conservation during their tenure, their temporary nature may well preclude them from being regarded, and accordingly recorded, as protected areas. Finally, unlike land owned or controlled by organisations, no distinction is made between whether individual landowners establish the protected area for profit or not-for-profit motives. This would appear to be rather inconsistent.

(iv) *Governance by indigenous peoples and local communities*⁴⁹

As I have previously mentioned in this article, it is this form of governance which has largely precipitated the increased focus on protected areas governance in recent times. This form of governance has even been labelled by some commentators as the 'most exciting conservation development of the 21st century'.⁵⁰ Having existed for hundreds or even thousands of years, its rise in prominence can partly be allied to the recognition of the rights of indigenous peoples and of local and mobile communities in several international instruments.⁵¹ Notwithstanding its apparent prevalence, this often complex form of governance is perhaps the least understood of all.⁵² There is nevertheless growing recognition that areas subject to this form of governance do contribute to biodiversity conservation, can fall within the bounds of the IUCN's definition of a protected area and should accordingly

⁴⁸ *IUCN Management Guidelines* op cit note 2 at 8–9.

⁴⁹ See generally: *IUCN Management Guidelines* op cit note 2 at 26 and 28–32; Ashish Kohari 'Community conserved areas: Towards ecological and livelihood security' (2006) 16(1) *Parks* 3–13; Borrini-Feyerabend et al op cit note 5 at 51–81; and Ashish Kothari 'Chapter 21: Community conserved areas' in Lockwood et al op cit note 5 at 549–72.

⁵⁰ Kothari op cit note 49 at 549.

⁵¹ These instruments include the 'International Covenant on Economic, Social and Cultural Rights' (1976) 21 *International Legal Materials* 925, 'ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries' (1989) 28 *International Legal Materials* 1382, and most recently the 'United Nations Declaration on the Rights of Indigenous Peoples' (2007) 46 *International Legal Materials* 1013.

⁵² *IUCN Management Guidelines* op cit note 2 at 28.

be the focus of significant future enquiry.⁵³ The most comprehensive outcome of this relatively recent enquiry has been the publication of the *IUCN Guidelines on Indigenous and Local Communities*.⁵⁴

This form of governance has been defined to refer to 'protected areas where the management authority and responsibility rest with indigenous peoples and/or local communities through various forms of customary or legal, formal or informal, institution and rules'.⁵⁵ The diversity of arrangements, institutions and areas which can potentially fall under this exceedingly broad definition is vast and not necessarily static.⁵⁶ These areas range from those in which the land, water or resources are subject to collective and/or individual tenure. The forms of tenure vary from full title to limited real rights afforded under customary law and/or statute. The land or resources in question may even be subject to government ownership, but with management authority allocated to one community or more. This management authority can similarly be founded in customary law and/or statute. The communities responsible for governing these areas can be sedentary and/or mobile, and the boundaries of these areas fixed or flexible. There may accordingly be several communities exercising authority over an area or resource at any one time. The following three traits have, though, been identified as central to this form of governance: the relevant indigenous peoples or local communities are closely concerned with the preservation of the area (although the objective of such concern varies from strict conservation to sustainable use); they hold the main authority (stemming from varied sources including custom or statute) to make and implement decisions in respect of the area; and the exercise of such authority leads to or contributes

⁵³ Ibid at 28–31. See further Kothari op cit note 49 at 3–13.

⁵⁴ Borrini-Feyerabend et al op cit note 5.

⁵⁵ *IUCN Management Guidelines* op cit note 2 at 26.

⁵⁶ For a comprehensive discussion of the nuanced governance types underpinning community conserved areas across the globe, see: Marco Bassi 'Community conserved areas in the Horn of Africa' (2006) 16(1) *Parks* 28–34; Beltran op cit note 5; Jessica Brown, Martha Lyman & Andrea Proctor 'Community Conserved Areas: Experience from North America' (2006) 16(1) *Parks* 35–42; Maurizio Ferrari 'Rediscovering community conserved areas in South-East Asia: Peoples; Initiative to reverse biodiversity loss' (2006) 16(1) *Parks* 43–8; Phillipa Holden, David Grossman & Brian Jones 'Community conserved areas in some Southern African countries' (2006) 16(1) *Parks* 68–73; Gonzalo Oviedo 'Community Conserved Areas in South America' (2006) 16(1) *Parks* 49–55; Neema Pathak 'Community conserved areas in South Asia' (2006) 16(1) *Parks* 56–62; Vivienne Rivera, Patricia Cordero, Marvin Borrás, Hugh Govan & Vera Varela 'Community conservation areas in Central America: Recognising them for equity and good governance' (2006) 16(1) *Parks* 21–7; Dermot Smyth 'Indigenous protected areas in Australia' (2006) 16(1) *Parks* 14–20; and Gonzalo Oviedo *Lessons Learned in the Establishment and Management of Protected Areas by Indigenous and Local Communities in South America* (2003).

to the sustainability of the area, notwithstanding the fact that this need not necessarily have been the rationale for the action.⁵⁷

In order to make some sense of this diversity, the *IUCN Management Guidelines* divide this form of governance into the following two sub-categories: 1) indigenous or traditional peoples areas, and territories established and run by these peoples; and 2) community conserved areas established and run by local communities. The merit of drawing a distinction between 'indigenous peoples'⁵⁸ and 'local communities'⁵⁹ is not immediately clear as the former are frequently regarded as the latter and the latter the former depending on where one is and to whom one talks.⁶⁰ This is specifically noted in the *IUCN Management Guidelines*,⁶¹ but the confusing terminology is nonetheless retained as part of an apparent compromise to accommodate the whims of all interest groups. Ironically, this form of governance is frequently conflated with terms such as indigenous community conserved areas (ICCAs) or simply 'community conserved areas' (CCAs). As mentioned in the context of shared governance, this mixed use of nomenclature would similarly appear to undermine the desire to create a common language for describing, planning for and recording protected areas governance.

What is also confusing is the potential for this type of governance to overlap with other types, most notably private governance and shared governance. How would one distinguish between a community conserved area and private governance where, for example, the community owns the land through an entity such as a trust or company (entities which are inherently private in nature) and exercises sole management authority over it? Furthermore, how would one distinguish between an indigenous people's protected area and co-management where, for example, several indigenous

⁵⁷ See Borrini-Feyerabend et al op cit note 5 at 51; and *IUCN Management Guidelines* op cit note 2 at 29.

⁵⁸ 'Indigenous peoples' are defined in Article 1 of the ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries op cit note 51 as including: 'Tribal peoples in indigenous countries whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (and) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.'

⁵⁹ 'Community' is defined as 'a human group sharing a territory and involved in different but related aspects of livelihoods – such as managing natural resources, producing knowledge and culture, and developing productive technologies and practices'; with 'local community' referring to those communities where members 'are likely to have *face-to-face* encounters and/or *direct* mutual influences in their daily life' (Borrini-Feyerabend et al op cit note 5 at 9).

⁶⁰ For a full discussion of the distinction between the definition of 'indigenous peoples' and 'local communities' see Borrini-Feyerabend et al ibid at 8–9.

⁶¹ *IUCN Management Guidelines* op cit note 2 at 28.

peoples or local communities residing within a given area collaborate in the management thereof? Finally, how would one distinguish between governance by government and a community conserved area where the area is under government ownership but the government grants a lease to local community to use and manage the area on their behalf?

(b) *Intersection with the management categories*

Notwithstanding these anomalies, to the extent that the governance types reflected in the *IUCN Management Guidelines* promote the use and appreciation of a diverse array of governance types, they should be welcomed. This is in keeping with the sentiments expressed at the 5th World Parks Congress where it was recognised that ‘... national protected area systems which combine different governance types are likely to be more resilient, responsive and adaptive under various threats to conservation, and hence more sustainable and effective in the long run’.⁶²

Significant thought has clearly gone into identifying and clarifying the differing forms of protected areas governance prior to and following the 5th World Parks Congress. This has been accompanied by an initiative to integrate the various forms of governance with the IUCN protected areas management categories to create a so-called ‘IUCN Protected Areas Matrix — a Classification System for Protected Areas Comprising Both Management Category and Governance Type’ (IUCN Protected Areas Matrix). The outcome of this process is reflected in Diagram 1 below.

Governance types Protected area categories	A. Governance by government			B. Shared governance			C. Private governance			D. Governance by indigenous peoples and local communities	
	Federal or national ministry or agency in charge	Sub-national ministry or agency in charge	Government-delegated management (e.g., to an NGO)	Transboundary management	Collaborative management (various forms of pluralist influence)	Joint management (pluralist management board)	Declared and run by individual land-owners	...by non-profit organizations (e.g., NGOs, universities)	... by for-profit organizations (e.g., corporate owners, cooperatives)	Indigenous peoples' protected areas and territories – established and run by indigenous peoples	Community conserved areas – declared and run by local communities
Ia. Strict Nature Reserve											
Ib. Wilderness Area											
II. National Park											
III. Natural Monument											
IV. Habitat/ Species Management											
V. Protected Landscape/ Seascape											
VI. Protected Area with Sustainable Use of Natural Resources											

Diagram 1: *IUCN Protected Areas Matrix: A Classification System for Protected Areas Comprising both Management Category and Governance Type*⁶³

⁶² 5th World Parks Congress, WPC. V.17.

⁶³ *IUCN Management Guidelines* op cit note 2 at 27.

The authors of the IUCN Protected Areas Matrix acknowledge that it describes the different types of management authority and responsibility that can exist for protected areas, but only affords passing recognition to issues of land tenure.⁶⁴ However, is land tenure not an essential determinant of authority, which warrants comprehensive reflection in the above matrix?⁶⁵ The authors appear to draw a distinction between ownership and governance stating that in 'some of the governance types . . . governance and ownership will often be the same'.⁶⁶ However, is ownership not an integral component or determinant of the form of governance, and not something to juxtapose it against? The authors clearly seek to afford recognition to a diversity of governance options (four main types and several sub-categories thereof). However, are these governance options sufficiently broad to capture accurately such diversity, or will the attempt to effectively straightjacket them into four main categories ultimately confuse, undermine and lead to the inaccurate recording of such diversity? As Borrini-Feyerand et al and others have indicated, governance options effectively exist on a continuum, with formal government controlled protected areas existing on the one extreme and informal community conserved areas on the other extreme.⁶⁷ Is it therefore wise to attempt to box governance types strictly within four main typologies when protected areas governance appears to be frightfully nuanced and frequently traverses the boxes? The practical implementation of this approach may prove problematic given the apparent inherent anomalies plaguing the current protected areas governance typologies promoted by the IUCN.

Perhaps the best way to illustrate the above anomalies inherent in the protected areas governance types reflected in the IUCN Protected Areas Matrix, is to apply them to a series of concrete examples. For the purpose of this article, two examples are drawn from the South African context: first, the Dwesa-Cwebe Nature Reserve situated in the Eastern Cape; and secondly, the Kruger National Park, traversing the provincial boundaries of Limpopo and Mpumalanga.

⁶⁴ Ibid. This is similarly reflected in Graham et al op cit note 14 at 15, which was one of the fundamental documents informing the development of the protected areas governance types included in the *IUCN Management Guidelines*.

⁶⁵ As noted by Mitchell op cit note 1 at 85, 'ownership models (have) particular implications for management'.

⁶⁶ *IUCN Management Guidelines* op cit note 2 at 27.

⁶⁷ Borrini-Feyerand et al op cit note 5 at 30. See further the similar governance continuum proposed by Dearden et al op cit note 24 at 93 ranging from full agency (or government) control to full control by others.

IV TESTING THE PRACTICAL UTILITY OF THE IUCN PROTECTED AREAS GOVERNANCE MATRIX

(a) *Dwesa-Cwebe Nature Reserve*

(i) *Brief overview of the Nature Reserve*⁶⁸

The Dwesa-Cwebe Nature Reserve, which generally comprises indigenous coastal forests and grasslands, is 5278 hectares in extent and is situated on the east coast of South Africa. Its history is contested, complex and protracted. In summary, the Dwesa-Cwebe Nature Reserve initially comprised two demarcated forest reserves declared in the 1890s.⁶⁹ A government body was appointed to manage the forest reserves, and the local residents were forcibly removed over a period of approximately 50 years. Several of the relocated local communities were, however, granted servitudes to access various areas and extract certain natural resources in the forest reserves.

The forest reserved were formally consolidated and proclaimed as the Dwesa-Cwebe Nature Reserve in 1975.⁷⁰ Its ownership and administration remained with the government. The area was fenced off and residents living adjacent to it were accordingly deprived of access to it and the coastal resources situated on its seaward boundary. A decade of drought in the 1980s, coupled with growing political mobilisation, resulted in the local community invading the Nature Reserve in 1994. Although they were forcibly removed by the army, the invasion prompted the new democratically elected government to enter into negotiations with local community leaders. This process culminated in the local community lodging a land claim under the Restitution of Land Rights Act⁷¹ in 1996.

Provisional approval of the restitution claim was granted by the Minister of Land Affairs in 1997, but it took four more years for it formally to be processed and finalised. In terms of the settlement agreement signed in 2001, ownership of the land situated in the Nature Reserve was transferred to the

⁶⁸ For a comprehensive overview of the history of the Dwesa-Cwebe Nature Reserve, see: Robin Palmer, Rosalie Kingwill, Mike Coleman & Nick Hamer *The Dwesa-Cwebe Restitution Claim: A Case Study as Preparation for a Field Based Learning Programme* (2007); Herman Timmermans 'Rural livelihoods at Dwesa-Cwebe: Poverty, development and natural resource use on the Wild Coast, South Africa' (2004) (unpublished MA Thesis, Rhodes University, 2004); Robin Palmer *From Title to Entitlement: The Struggle Continues at Dwesa-Cwebe* (2003) *Working Paper* 46, Fort Hare Institute of Social and Economic Research; and Robin Palmer, Herman Timmermans and Derick Fay (eds) *From Confrontation to Negotiation: Nature-Based Development on South Africa's Wild Coast* (2002).

⁶⁹ In terms of the now repealed Forests Act of 1888, all indigenous forests over five hectares were vested in the government and whilst not formally proclaimed as a protected area, the adjacent Dwesa and Cwebe coastal forests were regarded as forest reserves.

⁷⁰ This proclamation was issued under the Transkei Nature Conservation Act of 1971.

⁷¹ Act 22 of 1994.

Dwesa-Cwebe Land Trust (a formally registered trust comprising of two representatives of seven communal property associations,⁷² the latter established to represent the seven major villages in the area) subject to the following conditions: the Nature Reserve was to remain a national protected area in perpetuity; the Trust was to lease the land back to the provincial environmental authority (the Department of Economic Development and Environmental Affairs) for a period of 21 years; and the Trust, together with the provincial conservation authority (formerly Eastern Cape Nature Conservation and now the Eastern Cape Parks Board⁷³), was to 'co-manage' the protected area for the same period.⁷⁴ The settlement agreement contains a management planning framework and guarantees local communities managed access and use rights. The formalities relating to the co-management, access and use rights are recorded in a statutorily prescribed co-management agreement,⁷⁵ with such co-management theoretically undertaken through a co-management committee comprising equal representation from the ranks of the provincial conservation authority and Dwesa-Cwebe Land Trust. In addition, approximately R14 million was transferred to the Trust, comprising part compensation, part government grants and part consideration for entering the 21-year lease.

(ii) *Applying the governance typology and matrix to the Nature Reserve*

So where does the Dwesa-Cwebe Nature Reserve fall within the IUCN Protected Areas Matrix? Well, on the face of it, the Nature Reserve would appear to fall within the broad rubric of shared governance. But within which sub-category does it fall — collaborative management or joint management?

As indicated above, the delineation of these two sub-categories is somewhat confusing as different IUCN policy documents define them in different ways. However, relying on the terminology contained in the *IUCN Management Guidelines*, the arrangement would appear to be one of joint management since, in terms of the settlement agreement, the Trust and the provincial conservation authority are required jointly to take decisions regarding the management of the area. However, whilst this may be the arrangement on paper, in reality, the provincial conservation authority has since the agreement's inception exercised almost unilateral control over the management of the area.⁷⁶ Furthermore, the national environmental authorities (Department of Environmental Affairs: Marine and Coastal Manage-

⁷² Established in terms of the Communal Property Associations Act 28 of 1996.

⁷³ A statutory authority whose powers and functions are prescribed in the Provincial Parks Board Act 12 of 2003.

⁷⁴ For a summary of the process leading up to the conclusion of the settlement agreement and the terms of the agreement itself, see Palmer et al (2007) op cit note 68 at 28–36 and 39–43 respectively.

⁷⁵ This co-management agreement was concluded under the National Forests Act 84 of 1998.

⁷⁶ See Palmer et al (2007) op cit note 68 at 44–50.

ment Branch) exercise sole control over the sea-shore and the offshore marine living resources situated adjacent to the park.⁷⁷ The Nature Reserve would accordingly appear to look more like ‘collaborative management’ — with the provincial conservation authority exercising control in consultation with the Trust; or even like ‘governance by government’ — given that the provincial environmental authority was responsible for its proclamation and the provincial conservation authority exercises almost unilateral authority over the area.

However, the confusion does not end here. As highlighted above, private governance includes ‘protected areas under individual, cooperative, NGO or corporate control and ownership, and managed under not-for-profit or for profit schemes’.⁷⁸ The Nature Reserve would accordingly appear to fall under this category too, as the land is owned by the Dwesa-Cwebe Land Trust: effectively a single private, as opposed to a government, entity. As owner of the land, the Trust theoretically exercises significant authority over the land situated in the Nature Reserve. As mentioned above, whilst this authority is significantly curtailed by the lease, which effectively transfers authority from the Trust back to the provincial environmental and conservation authorities, the lease is only temporary in nature (21 years in duration) after which the community, operating through the Trust, may elect not to renew the lease and may thereby regain management authority over the land. Considering that the Nature Reserve was established with for-profit and not-for-profit motives, it is also difficult to categorise it within one of the sub-categories of private governance.

Finally, one could feasibly place the Reserve under the category of ‘governance by indigenous peoples and local communities’. The Trust, while constituting a single private entity, comprises of two members from seven communal property associations, each representing a village in the area. Therefore, whilst the ownership of the land vests in one entity, the control of this entity vests in many, who regard themselves as both members of a local community and indigenous peoples. The communities and indigenous peoples theoretically have a significant role to play in managing the area — a role somewhat hamstrung by the terms of the current lease, but which may well become a reality when it comes up for renewal. Furthermore, although the establishment and management of the area is predominantly founded in statute and involves aspects of shared governance, this would not appear to

⁷⁷ The sea and sea-shore adjacent to the Dwesa-Cwebe Nature Reserve was declared a Marine Protected Areas in terms of the Marine Living Resources Act 18 of 1998 in GN 1429 GG 2148 of 27 December 2000. Whilst the ‘home’ of the Marine and Coastal Management (MCM) Branch is in a state of some confusion owing to the restructuring of the Cabinet portfolios in 2009, it would still appear to fall under the Department of Environmental Affairs. According to the *Eastern Cape Parks Board Annual Report (2008/2009)* available at <http://www.parks.co.za>, MCM have delegated their management function over the Marine Protected Areas to the Eastern Cape Parks Board (at 30).

⁷⁸ *IUCN Management Guidelines* op cit note 2 at 26.

disqualify its classification as a ‘community conserved area’, owing to the broad delineation of this type of governance in the *IUCN Management Guidelines*. If one completed the IUCN Protected Areas Matrix for the Reserve it would look as follows:

Governance types Protected area categories	A. Governance by government			B. Shared governance			C. Private governance			D. Governance by indigenous peoples and local communities	
	Federal or national ministry or agency in charge	Sub-national ministry or agency in charge	Government delegated management (e.g., to an NGO)	Transboundary management	Collaborative management (various forms of pluralist influence)	Joint management (pluralist management board)	Declared and run by individual land-owners	... by non-profit organizations (e.g., NGOs, universities)	... by for-profit organizations (e.g., corporate owners, cooperatives)	Indigenous peoples' protected areas and territories – established and run by indigenous peoples	Community conserved areas – declared and run by local communities
Ia. Strict Nature Reserve											
Ib. Wilderness Area											
II. National Park											
III. Natural Monument											
IV. Habitat/ Species Management		★			★	★	★	★	★	★	★
V. Protected Landscape/ Seascape											
VI. Protected Area with Sustainable Use of Natural Resources											

Diagram 2: Completed IUCN Protected Areas Matrix for the Dwesa-Cwebe Nature Reserve

(b) Kruger National Park

(i) Brief overview of the National Park⁷⁹

The Kruger National Park, situated in the north-eastern corner of South Africa, is approximately 2 million hectares in extent and is the country’s largest (and premiere) national park. It was officially established in 1926 when two previously proclaimed game reserves, the Sabie Game Reserve and the Shingwedzi Game Reserve, were consolidated into one national park.⁸⁰ The land situated within the National Park was originally entirely government-owned. However, there are several privately-owned nature reserves abutting its western border and these now de facto form part of the National Park, as the fences between them and the Park have been

⁷⁹ For a comprehensive overview of the history of the Kruger National Park, see: Bertus De Villiers *Land Claims and National Parks: The Makuleke Experience* (1998); Conrad Steenkamp & Jana Uhr ‘The Makuleke land claim: Power relations and community-based natural resource management’ (2000) *Evaluating Eden Series Discussion Paper* No. 18, International Institute on Environment and Development; Maano Ramutsindela ‘The perfect way to ending a painful past? Makuleke land deal in South Africa’ (2002) 33 *GeoForum* 15–24; Hanna Reid ‘Contractual National Parks and Makuleke Community’ (2002) 29(2) *Human Ecology* 135–55; Jane Carruthers *The Kruger National Park: A Social and Political History* (1995); and Christo Fabricius ‘The Makuleke Story, South Africa’ in Lockwood et al op cit note 5 at 537.

⁸⁰ The Park was formally proclaimed in terms of the now repealed National Parks Act 56 of 1926.

removed.⁸¹ These privately-owned nature reserves are managed by the landowners themselves and/or privately appointed and funded conservation agencies.

The bulk of the National Park is nonetheless managed by South African National Parks (SANParks), a statutory authority responsible for managing all national parks in South Africa.⁸² SANParks has in turn granted several concessions to private commercial entities to operate several lodges within the boundaries of the National Park. The land on which these lodges have been established is formally leased to these private entities.

To complicate the governance structure further, the Makuleke community, which previously inhabited the northern Pafuri region of the National Park, but who were forcibly removed in 1969, lodged a land claim in 1995 under the Restitution of Land Rights Act. The claim was eventually resolved in 1998 and in terms of the land settlement agreement, ownership of some 22 734 hectares of land (of which approximately 19 000 is situated in the National Park) was restored to the community. The land is formally held by a communal property association⁸³ and the settlement agreement contains several conditions, including the following: the community lease the area situated in the borders of the National Park back to the government for a period of 50 years;⁸⁴ the land be retained as a national park; no residence, agriculture, mining or prospecting may take place on the land; and the land be principally used for conservation and 'associated commercial activities' such as eco-tourism.⁸⁵ The settlement agreement also provides for the establishment of a Joint Management Board, comprising of three community and three SANParks officials, to manage the area jointly. SANParks, until otherwise agreed, undertakes the *de facto* management of the Pafuri area. The community has apparent exclusive authority over commercial activity in the Pafuri region of the National Park. In consultation with the Joint Management Board, the community has granted concessions to private operators to undertake trophy hunting and establish two luxury resorts in the area. The income derived from the concessions accrues to the Makuleke Community Development Trust.

Furthermore, the Kruger National Park, including the Pafuri area owned by the Makuleke community, forms part of the Great Limpopo Transfrontier Park which straddles the South African border and includes the Limpopo National Park (Mozambique) and the Gonarezho National Park (Zimbabwe). Both the latter two parks are predominantly situated on government-

⁸¹ These privately owned nature reserves include: Umbabat Private Nature Reserve; Klaserie Private Nature Reserve; Timabvati Private Nature Reserve; Manyeleti Nature Reserve; and Sabi Sand Nature Reserve.

⁸² The composition, powers and functions of SANParks are prescribed in the National Environmental Management: Protected Areas Act 57 of 2003.

⁸³ Established in terms of the Communal Property Association Act 28 of 1996.

⁸⁴ Provision is made for this agreement to be reviewed after 25 years.

⁸⁵ For a summary of the process leading up to the conclusion of the settlement agreement and the terms of the agreement itself, see Steenkamp et al *op cit* note 79 at 11–20.

owned land and managed by government conservation agencies. The Transfrontier Park is regulated in terms of a Memorandum of Understanding entered into between the requisite ministers of the above three countries in November 2001.⁸⁶

(ii) *Applying the governance typology and matrix to the National Park*

What should be evident from the brief description of the governance structures and processes operating within and adjacent to the Kruger National Park is that they are even more complicated than those present in the Dwesa-Cwebe Nature Reserve.

The bulk of the National Park comprises government-owned land, and is managed by SANParks, a statutory authority. As such, the National Park largely falls within the governance by government category. However, as discussed above, the Pafuri area in the north of the National Park is subject to a distinct form of governance. It is owned by the Makuleke community, which has subsequently leased it back to the government. While the management of the land supposedly vests in the 'Joint Management Board', the bulk of management authority de facto vests in SANParks. Therefore, although the Pafuri region of the National Park would prima facie appear to constitute a form of shared governance (specifically collaborative as opposed to joint management, even though the name of the Board would suggest otherwise) it remains more akin to governance by government, with the caveat that the local community share in the revenue derived from private concessions operating in the region. Furthermore, as in the case of the Dwesa-Cwebe Nature Reserve, the area could also currently be, and most certainly on the termination of the lease in the future, will be, deemed to fall within the governance by indigenous peoples and local communities category, owing to the diversity of governance options which feasibly fall within this category's confines.

Aspects of private governance are also prevalent within the National Park. First, several commercial concessions have been granted to private companies to run lucrative game lodges within the National Park's borders. Secondly, the National Park's fence abutting several privately-owned and managed nature reserves along its western border has been removed, thereby in reality extending the boundary of the protected area as a whole. These private landowners have in turn entered co-management agreements with SANParks to co-ordinate their respective conservation management efforts, thereby resulting in the National Park traversing the collaborative management sub-category of shared governance. A further sub-category of the shared governance category, namely transboundary management, is also triggered as the National Park forms part of the Great Limpopo Transfrontier Park. The complete IUCN Protected Areas Matrix for the National Park would look as follows.

⁸⁶ Further information on the Great Limpopo Transfrontier Park is available at <http://www.peaceparks.org/>.

Governance types Protected area categories	A. Governance by government			B. Shared governance			C. Private governance			D. Governance by indigenous peoples and local communities	
	Federal or national ministry or agency in charge	Sub-national ministry or agency in charge	Government-delegated management (e.g. to an NGO)	Transboundary management	Collaborative management (various forms of pluralist influence)	Joint management (pluralist management board)	Declared and run by individual land-owners	... by non-profit organizations (e.g., NGOs, universities)	... by for-profit organizations (e.g., corporate owners, cooperatives)	Indigenous peoples' protected areas and territories – established and run by indigenous peoples	Community conserved areas – declared and run by local communities
Ia. Strict Nature Reserve											
Ib. Wilderness Area											
II. National Park	★	★		★	★	★	★	★	★	★	★
III. Natural Monument											
IV. Habitat/ Species Management											
V. Protected Landscape/ Seascape											
VI. Protected Area with Sustainable Use of Natural Resources											

Diagram 3: Completed IUCN Protected Areas Matrix for the Kruger National Park

V TOWARDS A DIFFERENT APPROACH TO PROTECTED AREAS GOVERNANCE

The design of the IUCN Protected Areas Matrix appears to anticipate that the form of governance for each protected area can neatly fall within one of eleven governance sub-categories identified by its authors. However, what the above two South African examples should illustrate is that there are a great diversity of governance options, several of which are frequently at play within one protected area. Given their overlapping nature, confused use of terminology, narrow formulation of governance and the potential to cloud the distinction between prescriptive management categories and descriptive governance types, the value of the current IUCN governance typology and matrix as tools for understanding, planning for and accurately recording protected areas must be questioned. Whilst developing typologies, matrices and check boxes do have their value in many contexts, perhaps it is too early to do so in the context of protected areas governance given the diversity, complexity and relative novelty of the discipline. I do not wish to underscore the value of the significant work which has gone into distilling many essential elements or characteristics of relevance to protected areas governance over the past decade.⁸⁷ I largely have a problem with the packaging of these

⁸⁷ See for instance: Peter Abrams, Grazia Borrini-Feyerabend, Julia Gardner & Pippa Heylings *Evaluating Governance: A Handbook to Accompany A Participatory Process for A Protected Areas* (2003); Borrini-Feyerabend op cit note 22; Borrini-Feyerabend et al op cit note 5; Borrini-Feyerabend et al op cit note 25; Paul Goriup (ed) ‘Community conserved areas’ (2006) 16(1) special edition of *Parks: International Journal for Protected Areas Managers*; Graham et al op cit note 14; IUCN Management Guidelines

elements; the efforts to compress an unruly concept into certain somewhat unruly boxes for the purpose of analysis and reporting.

So, what would be an alternate and desirable approach for achieving the objective of including the governance typology and matrix within the *IUCN Management Guidelines*? How can one move towards an approach which more accurately describes and records the rich diversity of governance options which have been used and/or could be used to improve the understanding of, planning for and accurately recording of protected areas?

Well, perhaps the first step is to develop a proper understanding of protected areas governance. As mentioned earlier in this article, there are two fundamental issues which appear to underlie the source, allocation and exercise of authority within a protected area. First, who owns or holds rights in the land and resources situated within a protected area — a question of land tenure. Secondly, who has the authority to manage the land and resources situated within a protected area — a question of land management.

In respect of both these components (land tenure and land management) two further issues require attention — the questions of who and how! Who holds the rights and/or authority?; and secondly, what is the basis and form of such rights and/or authority?

Addressing these two questions in the context of the land tenure component of governance, the land and/or natural resources falling within the protected areas could be owned and/or held by one or more entities. These entities could include the government, communities (acting through communal property associations, trusts and similar structures) and individuals (comprising of natural and juristic persons, including NGOs). The form of tenure could include legal or formal tenure, customary tenure, common tenure, de jure and de facto tenure. Finally, the content of such tenure could comprise of full ownership rights or more limited rights relating to development, use, access and/or occupation.

(See Diagram 4 over the page.)

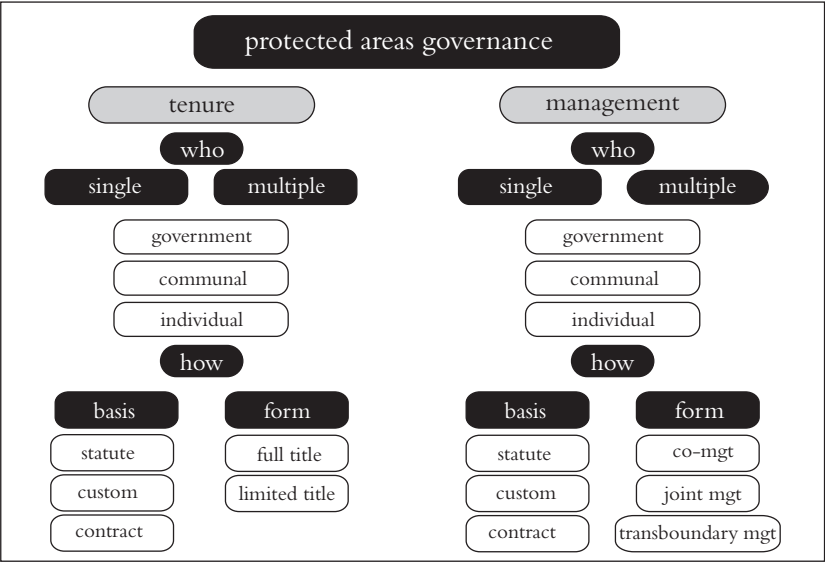


Diagram 4: The Components of Protected Areas Governance

In the context of the land management component of governance, the protected area could similarly be managed by one or more entities. The array of entities responsible for management, and the source/basis for the management authority are as identified above in the context of the land tenure component of governance. However, where one is dealing with multiple entity management, a further distinction could be drawn between co-management, joint management and transboundary management (as defined in the *IUCN Management Guidelines*). This understanding of protected areas governance, and the issues which inform its practical manifestation, are depicted in diagram 4 above.

It is argued that the above approach to grappling with protected areas governance could facilitate a better understanding of the governance prevalent in existing protected areas, and the myriad of alternatives available to those seeking to establish and/or afford formal recognition to new areas. This is, however, but the first step in the process. The second is the need to move away from what could be called the ‘squash into a box’ approach adopted in the *IUCN Management Guidelines*. In some circumstances, such as a government-owned and management protected areas for example, the form of governance could neatly be compressed into one box on a matrix. However, as illustrated above, there will be many circumstances where this is not possible. Therefore, perhaps one needs to adopt a different approach to recording protected areas governance, one which is less prescriptive (where one is compelled to tick a single box in a matrix of options) and more descriptive (where one can tick a range of boxes which seek to reflect the essential components underlying the practical manifestation of governance within a particular area). One could, for example, simply build an array of

check boxes into diagram 4 and ask domestic authorities to tick those components which are at play in the governance of a protected area.

VI CONCLUSION

While some may well argue that the above approach to describing, planning for and recording protected areas governance is far more complex than that adopted in the *IUCN Management Guidelines*, and may accordingly lead to confusion, I would respond that protected areas governance is complex. We should not seek to conceal this complexity by squeezing protected areas governance into a few boxes. We should rather seek to describe — perhaps even wallow in — its glorious diversity and promote the creativity shown by numerous jurisdictions in affording recognition to previously marginalised forms of protected areas governance. Is it not through this process that we can seek to understand protected areas governance properly, and promote the adoption of a blend of its components which may lead to the attainment of the ideal of good governance within protected areas?

Some may further argue that the above approach will undermine the credibility of existing recognised protected areas, will enable governments to fudge reporting on their domestic compliance with international commitments, and will thereby ultimately undermine the accuracy of existing global databases and statistics on protected areas. However, it is currently the protected areas management categories contained in the *IUCN Management Guidelines*, and not the governance categories contained therein, which act as the screen for determining whether a protected area is worthy of global recognition. The issue of governance is therefore more descriptive than prescriptive, something partially recognised in the *IUCN Management Guidelines* themselves, where it is stated that ‘management objectives for the categories can be developed and assigned without regard for governance’, and that the listing of governance type in the World Database on Protected Areas is largely about enhancing an understanding of and comparison between protected areas.⁸⁸ Perhaps for this reason alone, the current formulation and integration of governance categories within the *IUCN Management Guidelines* (particularly within its Protected Areas Matrix) should be reconsidered to avoid the global proliferation of a somewhat narrow understanding of protected areas governance, and its potential unwarranted rise to a global prescriptive requirement for affording formal recognition to protected areas.

⁸⁸ *IUCN Management Guidelines* op cit note 2 at 28.